

1
2
3 BILL NO. G-92-08-41 (AS AMENDED) (AS AMENDED)

4 GENERAL ORDINANCE NO. G-48-92

5 AN ORDINANCE of the Common Council of the
6 City of Fort Wayne, Indiana amending
7 Chapter 18 of the Municipal Code of the
8 City of Fort Wayne by adding a new
Article III entitled "Real Estate which
is Used For The Illegal Use or Sale of
Narcotics or Controlled Substances,
Gambling or Prostitution."

10 WHEREAS, the Common Council of the City of Fort Wayne,
11 and the Mayor of the City of Fort Wayne have determined this
amendment to Chapter 18 of the Municipal Code of the City of
12 Fort Wayne, adding a new Article III "Real Estate which is
Used For The Illegal Sales of Narcotics or Controlled
13 Substances, Gambling or Prostitution" is necessary in order to
give the Police Department and other departments and agencies
14 of the City of Fort Wayne additional means to utilize in
building a stronger and safer city; and

15 WHEREAS, the addition of this Article III to Chapter 18
16 of the Municipal Code of the City of Fort Wayne promotes the
public safety and welfare of the citizens of the City of Fort
17 Wayne, and will be in the best interests of the City.

18 NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF
19 THE CITY OF FORT WAYNE, INDIANA AS FOLLOWS:

20 SECTION 1. Chapter 18 of the Municipal Code of the City
21 of Fort Wayne, Indiana is hereby amended by adding thereto a
new Article III "Real Estate Which Is Used For The Illegal Use
22 Or Sales Of Narcotics Or Controlled Dangerous Substances,
Gambling Or Prostitution," which shall read as follows:

23 Sec. 18-53. PURPOSE. The Common Council of the City of
Fort Wayne finds it to be in the best interests of the
24 residents of the City of Fort Wayne and the general
public to provide for the regulation of conduct it deems
25 to be offensive, to prevent vice, disorder and
immorality; and to promote public peace, health and
26 safety, and to this end, the Common Council enacts this
27 section.

28
29
30
31
32

1
2 **Sec. 18-54 PERMITTING THE USE OF REAL ESTATE FOR ILLICIT**
3 **DRUG ACTIVITY, GAMBLING OR PROSTITUTION.** No owner of
4 real estate located in the City of Fort Wayne shall
5 knowingly allow that real estate to be used as a site for
6 any use or sale of illicit narcotics or controlled
7 dangerous substances, gambling or prostitution after
8 having received written notice pursuant to I.C. 36-7-9-
9 25, from the Police Department of the City of Fort Wayne,
10 that a present occupant or tenant of that property has
11 been using or selling illicit narcotics or controlled
12 dangerous substances, or allowing the using or selling of
13 illicit narcotics or controlled dangerous substances at
14 that property, or has been engaging in or allowing
15 gambling or prostitution, or has otherwise been engaging
16 in or allowed activity constituting a nuisance pursuant
17 to I.C. 34-1-52-1. A legal or equitable owner of such
18 real estate is deemed to have knowledge of such activity
19 upon receipt of notice set forth herein. For the
20 purposes of this Article, an owner of real estate is
21 defined as any person who, alone, or jointly or severally
22 with others shall have legal or equitable title to any
23 dwelling or dwelling unit.

24
25 **Sec. 18-55.** Notice is deemed to be given to the owner,
26 upon receipt of Notice as indicated above, by the owner
27 of record pursuant to the records and files of the Office
28 of the Allen County Assessor's Office.

29
30 **Sec. 18-56. DISCRIMINATION FORBIDDEN.** Nothing in this
31 section shall be construed to encourage or authorize the
32 discrimination by lessors against any person(s) based
33 upon race, creed, religion, sex, age, or national origin.
34 Rather, it is the intent of this article to hold persons
35 accountable for acquiescing in or participating in the
36 continued use of his/her property as the location of
37 illegal drug activity, after having received notice as
38 set forth in Section 18-55 above.

39
40 **Sec. 18-57. REPORTS, INVESTIGATIONS AND NOTICES BY THE**
41 **POLICE DEPARTMENT.**

42 (a) A complaint or report of suspected illegal
43 activities constituting the use or sale of
44 narcotics or controlled substances, or gambling,
45 prostitution, or conduct constituting a nuisance
46 pursuant to I.C. 34-1-52-1, by tenants, occupants
47 and/or their visitors, guests or invites as
48 observed by the lessor, third persons such as other
49 tenants of the property, or persons residing or
50 working in the vicinity of the property, or city
51 officials, and/or representatives of agencies
52 and/or departments of the City of Fort Wayne shall
53 be submitted to the office of Narcotics and Vice
54 Division of the Police Department of the City of
55 Fort Wayne and each such report or complaint shall
56 be individually logged in that office.

57
58 (b) Upon receipt of any report or complaint of
59 such suspected illegal activities on real estate
60 premises, a determination shall be made by the Fort
61 Wayne Police Department as to the need and nature
62 of any further investigation including, but not
63 limited to, the necessity for surveillance by the
64 Police Department of such real estate premises.

1
2 (c) Upon completion of investigation by the Fort
3 Wayne Police Department revealing that such
4 suspected illegal activity is taking place at a
5 particular premises, a warning letter shall be sent
6 by the Fort Wayne Police Department to the owner of
7 the real estate and a copy to the tenant/occupant
8 whose premise is the subject of the investigation,
9 by certified mail, return receipt requested,
10 informing the owner of the investigation revealed
11 the suspected illegal activity and the fact that
12 there is an on-going investigation. The warning
13 letter shall inform the owner of his/her choice to
14 take action to abate such suspected illegal
15 activity and of the intent of the Fort Wayne Police
16 Department, if its on-going investigation indicates
17 such suspected illegal activity has not ceased, to
18 take further legal action.

19
20 (d) Once a search warrant has been obtained to
21 search the real estate premises for narcotics or
22 controlled substances, or for any other evidence
23 related to such suspected illegal activity, a
24 second letter which shall be sent to the owner of
25 the real estate, by certified mail, return receipt
26 requested, shall inform the owner that such
27 warrant was served, that the investigation at the
28 premises is continuing, and that legal proceedings
29 may be commenced pursuant to this Article. Such
30 letter shall inform the owner of his/her choice to
31 take some form of remedial action. A copy of the
32 letter shall be sent to the Chief of Police, the
City Attorney's Office and to the tenant/occupant
of the premises for which a search warrant is
obtained.

33
34 (e) Upon receipt of a copy of the second letter
35 issued under Section 18-57(d) of this Article, the
36 City Attorney's office may proceed under I.C. 34-1-
37 52-2(b) to abate or enjoin any suspected illegal
38 activity as defined herein constituting a nuisance
39 as defined in I.C. 34-1-52-1, and/or to advise the
40 Police Department of the City of Fort Wayne to
41 issue a notice pursuant to Section 18-54 and 18-55
42 of this Article. The notice shall advise that
43 legal proceedings may be instituted against the
44 owner of real estate pursuant to this Article and
45 shall also inform the owner of his/her choice to
46 commence eviction proceedings pursuant to Section
47 18-59 of this Article.

48
49 Sec. 18-58. CRITERIA FOR ESTABLISHING A VIOLATION.
50 Conviction for a violation of this Article will be
51 determined by the appropriate judicial authority based
52 upon the totality of the circumstances present,
53 including, but not limited to that the owner has received
54 notices of suspected illegal activity pursuant to Secs.
55 18-54, 18-55 and 18-57 of this Article.

1
2 **Sec. 18-59. EVICTION PROCEEDINGS AS A DEFENSE.** No
3 person shall be charged with the violation of this
4 article if such person:

- 5 a) Has instituted eviction proceedings within
6 thirty (30) days of receipt of notice of
7 criminal activities in accordance with Section
8 18-54 above, against the tenant whose
9 suspected criminal activities would otherwise
10 give rise to potential liability under this
11 article; and,
- 12 b) Has completed the eviction proceedings within
13 thirty (30) days of commencement of the
14 proceedings.
- 15 c) If any eviction proceedings are not completed
16 within thirty (30) days by reason of court
17 ordered delays in such proceedings, the person
18 charged with a violation of this Article must,
19 nonetheless, move forward expeditiously with
20 any such eviction proceeding.

21 **Sec. 18-60. MULTIPLE UNIT DWELLINGS.** In the case of a
22 multiple unit dwelling, the only person(s) necessary to
23 name in an eviction proceeding is the tenant/occupant
24 occupying the actual unit involved with the suspected
25 illegal activity described herein.

26 **Sec. 18-61. FILING OF CRIMINAL CHARGES.** Charging an
27 owner of real estate with a violation of this Article
28 shall be an adjunct to, and not substitution for, any
29 criminal charges filed as a result of investigation by
30 the Police Department against occupants or tenants of
31 that owner's real estate premises for use or sale of
32 illicit drugs or controlled dangerous substances,
1 gambling, prostitution or conduct constituting a nuisance
2 pursuant to I.C. 34-1-52-1, or Section 18-35 of the
3 Municipal Code of the City of Fort Wayne.

4 **Sec. 18-62. ASSISTANCE BY CHIEF OF POLICE.** The Chief of
5 Police shall use reasonable efforts to train, educate and
6 assist owners of real estate in avoiding placing tenants
7 or occupants in their real estate who are known violators
8 of illegal activities enumerated herein.

1 Sec. 18-63: LIMITED INDEMNIFICATION OF OWNERS OF
2 REAL ESTATE. The City of Fort Wayne shall provide a
3 limited indemnification to an owner of real estate
4 located in the City of Fort Wayne, subject to the
5 following conditions:

- 6 1. That the owner of real estate shall have
7 received the written notice required by Section 18-
8 54 of this Article from the Police Department of
9 the City of Fort Wayne advising that a present
10 occupant or tenant of the property of that owner of
11 real estate has been using or selling illicit
12 narcotics or controlled dangerous substances or
13 allowing the using or selling of illicit narcotics
14 or controlled dangerous substances at that
15 property, or who has been engaging in or allowing
16 gambling or prostitution or as otherwise been
17 engaging in or allowing activity constituting a
18 nuisance pursuant to I.C. 34-1-52-1.
- 19 2. That the owner of real estate has instituted
20 eviction proceedings with thirty (30) days of
21 receipt of notice of suspected illegal activities
22 in accordance with Section 18-54 of this article
23 against a tenant whose suspected criminal
24 activities would otherwise give rise to potential
25 liability under this article.
- 26 3. That the owner of real estate shall give no
27 less than thirty (30) days notice to the City
28 Attorney, by certified mail, return-receipt
29 requested, of the trial date for any eviction
30 proceedings and a list containing the names and
31 addresses of all witnesses the owner of real estate
32 intends to call at the hearing.
- 33 4. That the City Attorney, upon receipt of the
34 notice and list of witnesses shall have the right
35 to provide the owner of real estate with the names
36 and addresses of additional other witnesses
37 including but not limited to witnesses from the
38 Fort Wayne Police Department whose presence shall
39 be required at the hearing on the eviction
40 proceedings.
- 41 5. All witnesses listed by either the owner of
42 real estate and/or the City Attorney's office shall
43 be subpoenaed by the owner of real estate in proper
44 and legal fashion, and be allowed to testify.
- 45 6. The tenant involved as a defendant in the
46 eviction proceedings shall prevail on the merits,
47 not by reason of procedural irregularities but by
48 sole reason that a court finds after trial that the
49 illegal activity alleged in the notice the owner of
50 real estate had received pursuant to Section 18-54
51 of this article, did not, in fact, take place.
- 52 7. The tenant institutes legal proceedings against
53 the owner of real estate in the form of a counter
54 claim or separate action and obtains a judgment for
55 damages against the owner of real estate by reason
56 of the tenant having prevailed on the merits in
57 accordance with paragraph 6 above.
- 58 8. The owner of real estate completes whatever
59 steps he/she chooses to undertake to seek review
60 of the judgment by Motion to Correct Errors and/or
61 appeal.

9. The limited indemnification by the City of Fort Wayne shall be restricted solely to those damages assessed by judgment against the owner of real estate as set out aforesaid but shall not, in any event, include any attorney's fees incurred by the owner of real estate in connection with the enforcement of any of the terms of this article; but will include either the reasonable attorney's fees incurred in the defense of legal proceedings brought by a tenant pursuant to paragraph 7 above regardless of the outcome of the proceedings, or the provision of the legal services by the City of Fort Wayne, at the City's option.

Sec. 18-64. LIST TO BE KEPT BY POLICE DEPARTMENT. The Police Department shall keep a list of the names and addresses of all tenants/occupants to whom copies of letters sent pursuant to Sec. 18-57 (d) of this article, and shall make the names available to members of the public requesting same in reference to potential renters of real estate in the City.

Sec. 18-65. PENALTY. Whoever violates any provision of this section shall, upon conviction thereof, in a sum up to Two Thousand Five Hundred Dollars (\$2,500.00) and costs of prosecution. Each day a violation of this article continues constitutes a separate offense.

Sec. 2 This Ordinance shall be in full force and effect 60 days after its passage by the Common Council and approved by the Mayor of the City of Fort Wayne and proper legal publication, during which period owners of real estate in the City of Fort Wayne, Indiana shall have the opportunity to prepare lease documents for execution by their tenants, which lease documents take into consideration the existence of this ordinance.

COUNCILMEMBER

1
2 BILL NO. G-92-08-41 (AS AMENDED)
3
4 GENERAL ORDINANCE NO. G-

5 AN ORDINANCE of the Common Council of the
6 City of Fort Wayne, Indiana amending
7 Chapter 18 of the Municipal Code of the
8 City of Fort Wayne by adding a new
Article III entitled "Real Estate which
is Used For The Illegal Use or Sale of
Narcotics or Controlled Substances,
Gambling or Prostitution."

9
10 WHEREAS, the Common Council of the City of Fort Wayne,
11 and the Mayor of the City of Fort Wayne have determined this
amendment to Chapter 18 of the Municipal Code of the City of
12 Fort Wayne, adding a new Article III "Real Estate which is
Used For The Illegal Sales of Narcotics or Controlled
Substances, Gambling or Prostitution" is necessary in order to
13 give the Police Department and other departments and agencies
of the City of Fort Wayne additional means to utilize in
building a stronger and safer city; and

14
15 WHEREAS, the addition of this Article III to Chapter 18
16 of the Municipal Code of the City of Fort Wayne promotes the
public safety and welfare of the citizens of the City of Fort
Wayne, and will be in the best interests of the City.

17
18 NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF
THE CITY OF FORT WAYNE, INDIANA AS FOLLOWS:

19
20 SECTION 1. Chapter 18 of the Municipal Code of the City
21 of Fort Wayne, Indiana is hereby amended by adding thereto a
new Article III "Real Estate Which Is Used For The Illegal Use
Or Sales Of Narcotics Or Controlled Dangerous Substances,
22 Gambling Or Prostitution," which shall read as follows:

23
24 Sec. 18-53. PURPOSE. The Common Council of the City of
Fort Wayne finds it to be in the best interests of the
residents of the City of Fort Wayne and the general
25 public to provide for the regulation of conduct it deems
to be offensive, to prevent vice, disorder and
immorality; and to promote public peace, health and
26 safety, and to this end, the Common Council enacts this
section.

1
2 Sec. 18-54 PERMITTING THE USE OF REAL ESTATE FOR ILLICIT
3 DRUG ACTIVITY, GAMBLING OR PROSTITUTION. No person who
4 has legal or equitable ownership of real estate located
5 in the City of Fort Wayne shall knowingly allow that real
6 estate to be used as a site for any use or sale of
7 illicit narcotics or controlled dangerous substances,
8 gambling or prostitution after having received written
9 notice pursuant to I.C. §36-7-9-25, from the Police
10 Department of the City of Fort Wayne, that a present
11 occupant or tenant of that property has been using or
12 selling illicit narcotics or controlled dangerous substances,
13 or allowing the using or selling of illicit narcotics or controlled dangerous substances at that
14 property, or has been engaging in or allowing gambling or
15 prostitution, or has otherwise been engaging in or
16 allowed activity constituting a nuisance pursuant to I.C.
17 34-1-52-1. A legal or equitable owner of such real
18 estate is deemed to have knowledge of such activity upon
19 receipt of notice set forth herein.

20 Sec. 18-55. Notice is deemed to be given to the owner,
21 upon receipt of Notice as indicated above, by the owner
22 of record pursuant to the records and files of the Office
23 of the Allen County Recorder's Office.

24 Sec. 18-56. DISCRIMINATION FORBIDDEN. Nothing in this
25 section shall be construed to encourage or authorize the
26 discrimination by lessors against any person(s) based
27 upon race, creed, religion, sex, age, or national origin.
28 Rather, it is the intent of this article to hold persons
29 accountable for acquiescing in or participating in the
30 continued use of his/her property as the location of
31 illegal drug activity, after having received notice as
32 set forth in Section 18-55 above.

Sec. 18-57. REPORTS, INVESTIGATIONS AND NOTICES BY THE
POLICE DEPARTMENT.

(a) A complaint or report of suspected illegal
activities constituting the use or sale of
narcotics or controlled substances, or gambling,
prostitution, or conduct constituting a nuisance
pursuant to I.C. 34-1-52-1, by tenants, occupants
and/or their visitors as observed by the lessor,
third persons such as other tenants of the
property, or persons residing or working in the
vicinity of the property, or city officials, and/or
representatives of agencies and/or departments of
the City of Fort Wayne shall be submitted to the
office of Narcotics and Vice Division of the Police
Department of the City of Fort Wayne and each such
report or complaint shall be individually logged in
that office.

(b) Upon receipt of any report or complaint of
such suspected illegal activities on real estate
premises, a determination shall be made by the Fort
Wayne Police Department as to the need and nature
of any further investigation including, but not
limited to, the necessity for surveillance by the
Police Department of such real estate premises.

(c) Upon completion of investigation by the Fort Wayne Police Department revealing that such suspected illegal activity is taking place at a particular premises, a warning letter shall be sent by the Fort Wayne Police Department to the owner of the real estate and a copy to the tenant whose rented premises are the subject of the investigation, by certified mail, return receipt requested, informing said owner of the investigation revealed said suspected illegal activity and the fact that there is an on-going investigation. Said warning letter shall inform the owner of his/her choice to take action to abate such suspected illegal activity and of the intent of the Fort Wayne Police Department, if its on-going investigation indicates such suspected illegal activity has not ceased, to take further legal action.

(d) Once a search warrant has been obtained to search the real estate premises for narcotics or controlled substances, or for any other evidence related to such suspected illegal activity, a notice which shall be sent to the owner of the real estate, return receipt requested, shall inform the owner that such warrant was served and that legal proceedings may be commenced pursuant to this Ordinance. Such notice shall inform said owner of his/her choice to take some form of remedial action including eviction proceedings pursuant to section 18-59 of this Ordinance. A copy of said notice shall be sent to the Chief of Police, the City Attorney's Office and to the tenant of the premises for which a search warrant is obtained.

Sec. 18-58. CRITERIA FOR ESTABLISHING A VIOLATION.
Conviction for a violation of this Ordinance will be determined by the appropriate judicial authority based upon the totality of the circumstances present, including, but not limited to that the owner has received notices of suspected illegal activity pursuant to Secs. 18-54, 18-55 and 18-57 of this Ordinance.

Sec. 18-59. EVICTION PROCEEDINGS AS A DEFENSE. No person shall be charged with the violation of this article if such person:

- a) Has instituted eviction proceedings within thirty (30) days of receipt of notice of criminal activities in accordance with Section 18-54 above, against the tenant whose suspected criminal activities would otherwise give rise to potential liability under this article; and,
 - b) Has completed said eviction proceedings within thirty (30) days of commencement of said proceedings.

c) If any eviction proceedings are not completed within thirty (30) days by reason of court ordered delays in such proceedings, the person charged with a violation of this Ordinance must, nonetheless, move forward expeditiously with any such eviction proceeding.

Sec. 18-59. MULTIPLE UNIT DWELLINGS. In the case of a multiple unit dwelling, the only person(s) necessary to name in an eviction proceeding is the person occupying the actual unit involved with the activity suspected and/or the person(s) suspected of the activity described herein.

Sec. 18-60. PENALTY. Whoever violates any provision of this section shall, upon conviction thereof, be fined the sum of Two Thousand Five Hundred Dollars (\$2,500.00) and costs of prosecution. Each day a violation of this article shall continue shall constitute a separate offense."

Sec. 18-61. FILING OF CRIMINAL CHARGES. Charging an owner of real estate with a violation of this Ordinance shall be an adjunct to, and not substitution for, any criminal charges filed as a result of investigation by the Police Department against occupants or tenants of that owner's real estate premises for use or sale of illicit drugs or controlled dangerous substances, gambling, prostitution or conduct constituting a nuisance pursuant to I.C. 34-1-52-1.

SECTION 2. This Ordinance shall be in full force and effect from and after its passage by the Common Council and approval by the Mayor and proper legal publication.

COUNCILMEMBER

APPROVED AS TO FORM
AND LEGALITY.

Stanley A. Levine
Legal Advisor to
Fort Wayne Common Council

1
2 BILL NO. G-92-08-41
3

4 GENERAL ORDINANCE NO. G-
5
6

7 AN ORDINANCE of the Common
8 Council of the City of Fort
9 Wayne, Indiana amending Chapter
10 18 of the Municipal Code of the
11 City of Fort Wayne by adding a
12 new Article III entitled "Real
13 Estate which is Used For The
14 Illegal Use or Sale of
15 Narcotics or Controlled
16 Substances"

17 WHEREAS, the Common Council of the City of Fort Wayne,
18 and the Mayor of the City of Fort Wayne have determined this
19 amendment to Chapter 18 of the Municipal Code of the City of
20 Fort Wayne, adding a new Article III "Real Estate which is
21 Used For The Illegal Sales of Narcotics or Controlled
22 Substances" is necessary in order to give the Police
23 Department and other departments and agencies of the City of
24 Fort Wayne additional means to utilize in building a stronger
25 and safer city; and

26 WHEREAS, the addition of this Article III to Chapter 18
27 of the Municipal Code of the City of Fort Wayne promote the
28 public safety and welfare of the citizens of the City of Fort
29 Wayne, and will be in the best interests of the City.

30 NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF
31 THE CITY OF FORT WAYNE, INDIANA AS FOLLOWS:

32 SECTION 1. Chapter 18 of the Municipal Code of the City
33 of Fort Wayne, Indiana is hereby amended by adding thereto a
34 new Article III "Real Estate Which Is Used For The Illegal Use
35 Or Sales Of Narcotics Or Controlled Dangerous Substances",
36 which shall read as follows:

37 Section 18-53. PURPOSE. The Common Council of the
38 City of Fort Wayne finds it to be in the best
39 interests of the residents of the City of Fort
40 Wayne and the general public to provide for the
41 regulation of conduct it deems to be offensive, to
42 prevent vice, disorder and immorality; and to
43 promote public peace, health and safety, and to
44 this end, the Common Council enacts this section

45 18-54 PERMITTING THE USE OF REAL ESTATE FOR ILLICIT
46 DRUG ACTIVITY. No person who has legal or equitable
47 ownership of real estate located in the City of Fort
48 Wayne shall knowingly allow that real estate to be
49 used as a site for any use or sale of illicit
50 narcotics or controlled dangerous substances, after
51 having received written notice pursuant to I.C.
52 §36-7-9-25, from the City of Fort Wayne, or any
53 department or agency thereof, that a present
54 occupant or tenant of that property has been using
55 or selling illicit narcotics or controlled dangerous
56 substances, or allowing the using or selling of
57 illicit narcotics or controlled dangerous substances
58 at that property. A legal or equitable owner of
59 such real estate is deemed to have knowledge of such
60 activity upon receipt of notice set forth herein.

18-55. Notice is deemed to be given to the owner,
upon receipt of Notice as indicated above, by the
owner of record pursuant to the records and files
of the Office of the Allen County Recorder's
Office.

18-56. DISCRIMINATION FORBIDDEN. Nothing in this
section shall be construed to encourage or
authorize the discrimination by lessors against any
person(s) based upon race, creed, religion, sex,
age, or national origin. Rather, it is the intent
of this article to hold persons accountable for
acquiescing in or participating in the continued
use of his/her property as the location of illegal
drug activity, after having received notice as set
forth in Section 18-55 above.

18-57. CRITERIA FOR ESTABLISHING VIOLATIONS. The
conviction for violation of this article will be
determined by the appropriate judicial authority
based upon the totality of the circumstances
present, including but not limited to: That the
owner, having received notice as set forth in
Sections 18-54 and 18-55, of the following
activities:

Suspected illegal activities by tenants and/or
their visitors on that property as observed by
the lessor, third parties such as other
tenants of the property, or persons residing
or working in the vicinity of the property, or
City officials, and/or representatives of
agencies and/or departments of the City of
Fort Wayne.

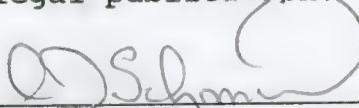
18-58. EVICTION PROCEEDINGS AS A DEFENSE. No
person shall be charged with the violation of this
article if such person:

- a) Has instituted eviction proceedings within
thirty (30) days of receipt of notice of
criminal activities in accordance with Section
18-54 above, against the tenant whose
suspected criminal activities would otherwise
give rise to potential liability under this
article; and,
- b) Has completed said eviction proceedings within
thirty (30) days of commencement of said
proceedings.

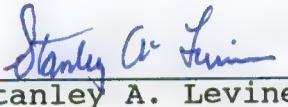
18-59. MULTIPLE UNIT DWELLINGS. In the case of a
multiple unit dwelling, the "only" person(s)
necessary to name in an eviction proceeding is the
person occupying the actual unit involved with the
activity suspected and/or the person(s) suspected
of the activity described herein.

18-60. PENALTY. Whoever violates any provision of
this section shall, upon conviction thereof, be
fined the sum of Two Thousand Five Hundred Dollars
(\$2,500.00) and costs of prosecution. Each day a
violation of this article shall continue shall
constitute a separate offense."

SECTION 2. This Ordinance shall be in full force and
effect from and after its passage by the Common Council and
approval by the Mayor and proper legal publication.


COUNCILMEMBER

1 APPROVED AS TO FORM
2 AND LEGALITY.

3 
4 Stanley A. Levine
5 Legal Advisor to
6 Fort Wayne Common Council

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32

BILL NO. G-92-08-41

REPORT OF THE COMMITTEE ON
THE COMMITTEE OF THE WHOLE

DONALD J. SCHMIDT, CHAIR
CLETUS R. EDMONDS, VICE CHAIR
ALL COUNCIL MEMBERS

(held)
for 11/10/92

WE, YOUR COMMITTEE ON THE COMMITTEE OF THE WHOLE TO WHOM WAS REFERRED AN (ORDINANCE) ~~(RESOLUTION)~~ of the Common Council of the City of Fort Wayne, Indiana, amending Chapter 18 of the Municipal Code of the City of Fort Wayne by adding a new Article III entitled "Real Estate which is Used For The Illegal Use or Sale of Narcotics or Controlled Substances"

HAVE HAD SAID (ORDINANCE) ~~(RESOLUTION)~~ UNDER CONSIDERATION AND BEG LEAVE TO REPORT BACK TO THE COMMON COUNCIL THAT SAID (ORDINANCE) ~~(RESOLUTION)~~

DO PASS

DO NOT PASS

ABSTAIN

NO REC

all Council members:

DATED:

Sandra E. Kennedy
City Clerk

Mark - 90

Passed

PROPOSED AMENDMENT TO BILL NO. G-92-08-41

Section 2 of this bill shall be amended to read as follows:

Sec. 2. This ordinance shall be in full force and effect ~~180~~⁶⁰ days after its passage by the Common Council and approved by the Mayor of the City of Fort Wayne and proper legal publication, during which period owners of real estate in the City of Fort Wayne, Indiana shall have the opportunity to prepare lease documents for execution by their tenants, which lease documents take into consideration the existence of this ordinance.

PROPOSED AMENDMENT TO BILL NO. G-92-08-41

Section 2 of this bill shall be amended to read as follows:

Sec. 2. This ordinance shall be in full force and effect ~~100~~⁶⁰ days after its passage by the Common Council and approved by the Mayor of the City of Fort Wayne and proper legal publication, during which period owners of real estate in the City of Fort Wayne, Indiana shall have the opportunity to prepare lease documents for execution by their tenants, which lease documents take into consideration the existence of this ordinance.

*U. Vale 9-0
(Passed)*

mark

PROPOSED AMENDMENT TO BILL NO. G-92-08-41

the
There shall be added to said Ordinance the following new Section:

Sec. 18-63: LIMITED INDEMNIFICATION OF OWNERS OF REAL ESTATE. The City of Fort Wayne shall provide a limited indemnification to an owner of real estate located in the City of Fort Wayne, subject to the following conditions:

the
1. That ~~said~~ owner of real estate shall have received the written notice required by Section 18-54 of this Article from the Police Department of the City of Fort Wayne, *already*, that a present occupant or tenant of the property of that owner of real estate has been using or selling illicit narcotics or controlled dangerous substances or allowing the using or selling of illicit narcotics or controlled dangerous substances at that property, or who has been engaging in or allowing gambling or prostitution or as otherwise been engaging in or allowing activity constituting a nuisance pursuant to I.C. 34-1-52-1.

2. That said owner of real estate has instituted eviction proceedings with thirty (30) days of receipt of notice of suspected illegal activities in accordance with Section 18-54 of this article against a tenant whose suspected criminal activities would otherwise give rise to potential liability under this article.

3. That said owner of real estate has either completed said ~~eviction proceedings within thirty (30) days of commencement of~~ ~~said proceedings or, if any eviction proceedings are not completed within thirty (30) days by reason of court ordered delays of such proceedings,~~ ~~said owner of real estate has moved forward expeditiously with any such eviction proceedings.~~

4. That said owner of real estate shall give no less than thirty (30) days notice to the City Attorney, by certified mail, return-receipt requested, of the trial date for any eviction proceedings and a list containing the names and addresses of all witnesses the owner of real estate intends to call at said hearing.

5. That the City Attorney, upon receipt of said notice and list of witnesses shall have the right to provide the owner of real estate with the names and addresses of additional other witnesses including but not limited to witnesses from the Fort Wayne Police Department whose presence shall be required at the hearing on the eviction proceedings.

6. All witnesses listed by either the owner of real estate and/or the City Attorney's office shall be subpoenaed by said owner of real estate in a proper and legal fashion, and ~~shall appear and testify at the trial to testify.~~ *and be allowed*

7. The tenant involved as a defendant in said eviction proceedings shall prevail *on the merits, not by reason of procedural*

irregularities but, ^{by} the sole reason that a court finds after trial that the illegal activity alleged in the notice the owner of real estate had received pursuant to Section 18-54 of this article, did not, in fact, take place.

8. The tenant institutes legal proceedings against the owner of real estate ^{in the court of law} and obtains a judgment for damages against the owner of real estate by reason of said tenant having prevailed on the merits in accordance with paragraph 7 above.

9. The owner of real estate completes whatever steps he/she chooses to undertake to seek review of said judgment by Motion to Correct Errors and/or appeal.

10. The limited indemnification by the City of Fort Wayne shall be restricted solely to those damages assessed by judgment against the owner of real estate as set out aforesaid but shall not, in any event, include any attorney's fees incurred by the owner of real estate in connection with the enforcement of any of the terms of this article ~~and/or the defense of any legal proceedings brought by a tenant against said owner.~~

but will ~~not~~ ^{include} ~~incurred in the defense of~~ the reasonable attorney fees, brought by the tenant against the ~~owner~~ as a result of the enforcement of this ord. or the ~~provision~~ of legal services by Fort Wayne by the city option pursuant to 8 above regardless of outcome).

PROPOSED AMENDMENT TO BILL NO. G-92-08-41

There shall be added to said Ordinance the following new Section:

Sec. 18-63: LIMITED INDEMNIFICATION OF OWNERS OF REAL ESTATE. The City of Fort Wayne shall provide a limited indemnification to an owner of real estate located in the City of Fort Wayne, subject to the following conditions:

1. That said owner of real estate shall have received the written notice required by Section 18-54 of this Article from the Police Department of the City of Fort Wayne ~~that~~ that a present occupant or tenant of the property of that owner of real estate has been using or selling illicit narcotics or controlled dangerous substances or allowing the using or selling of illicit narcotics or controlled dangerous substances at that property, or who has been engaging in or allowing gambling or prostitution or as otherwise been engaging in or allowing activity constituting a nuisance pursuant to I.C. 34-1-52-1.

2. That said owner of real estate has instituted eviction proceedings with thirty (30) days of receipt of notice of suspected illegal activities in accordance with Section 18-54 of this article against a tenant whose suspected criminal activities would otherwise give rise to potential liability under this article.

3. That said owner of real estate has either completed said eviction proceedings within thirty (30) days of commencement of said proceedings or, if any eviction proceedings are not completed within thirty (30) days by reason of Court ordered delays of such proceedings, said owner of real estate has moved forward expeditiously with any such eviction proceedings.

4. That said owner of real estate shall give no less than thirty (30) days notice to the City Attorney, by certified mail, return-receipt requested, of the trial date for any eviction proceedings and a list containing the names and addresses of all witnesses the owner of real estate intends to call at ~~said~~ hearing.

5. That the City Attorney, upon receipt of ~~said~~ notice and list of witnesses shall have the right to provide the owner of real estate with the names and addresses of additional other witnesses including but not limited to witnesses from the Fort Wayne Police Department whose presence shall be required at the hearing on the eviction proceedings.

6. All witnesses listed by either the owner of real estate and/or the City Attorney's office shall be subpoenaed by ~~said~~ owner of real estate in a proper and legal fashion, and shall appear and testify at the trial ~~to~~ ^{to the} ~~and be allowed to~~

7. The tenant involved as a defendant in ~~said~~ eviction proceedings shall prevail ^{on} the merits, not by reason of procedural

irregularities but ^{by} the sole reason that a court finds after trial that the illegal activity alleged in the notice the owner of real estate had received pursuant to Section 18-54 of this article, did not, in fact, take place.

In the form of a Counterclaim or separate action

8. The tenant institutes legal proceedings against the owner of real estate and obtains a judgment for damages against the owner of real estate by reason of ~~said~~ tenant having prevailed on the merits in accordance with paragraph 7 above.

9. The owner of real estate completes whatever steps he/she chooses to undertake to seek review of ~~said~~ judgment by Motion to Correct Errors and/or appeal. *de*

10. The limited indemnification by the City of Fort Wayne shall be restricted solely to those damages assessed by judgment against the owner of real estate as set out aforesaid but shall not, in any event, include any attorney's fees incurred by the owner of real estate in connection with the enforcement of any of the terms of this article; and/or the defense of any legal proceedings brought by a tenant against said owner. *but will include*

*either the reasonable attys fees incurred in the defense of
legal proceedings brought by a tenant against the owner
as the result of an enforcement of this ordinance, or the
provision of legal services by the City of Fort Wayne,
at the City's option.*

*the
outcome of ~~the~~
proceedings*

ADD¹ 18-63^{b4} Police Department to keep lists of addresses
letters
of ~~notices~~ sent pursuant to § section 18-57(c) and (d)
of this Article.
The Police department shall keep a list
of ~~all~~ the names and addresses of all tenants/
occupants to whom copies of letters sent pursuant
to sec. 18-57 ~~(c) and (d)~~ of this Article, and
shall make said names available to members
of the public requesting same in reference to
potential renters of real estate in ~~this~~ for
city.

X If you strike 18-57(a)
you keep list for second letter's
only

PS 2 line 14

PROPOSED AMENDMENT TO BILL NO. G-92-08-41

The paragraph entitled Sec. 18-63. **PENALTY**, shall be amended to read as follows:

Sec. 18-63. **PENALTY**. Whoever violates any provision of this section shall, upon conviction thereof, be fined ~~the sum of net up to~~ ^{in a} ~~less than One Hundred Dollars (\$100.00) and no more than~~ Two Thousand Five Hundred Dollars (\$2,500.00) and costs of prosecution. Each day a violation of this article continues constitutes a separate offense.

~~not less than~~ ^{\$}1,000

PROPOSED AMENDMENT TO BILL NO. G-92-08-41

The paragraph entitled Sec. 18-63. **PENALTY**, shall be amended to read as follows:

Sec. 18-63. **PENALTY**. Whoever violates any provision of this section shall, upon conviction thereof, be fined the sum of not less than One Hundred Dollars (\$100.00) and no more than Two Thousand Five Hundred Dollars (\$2,500.00) and costs of prosecution. Each day a violation of this article continues constitutes a separate offense.



1
2 (c) Upon completion of investigation by the Fort
3 Wayne Police Department revealing that such
4 suspected illegal activity is taking place at a
5 particular premises, a warning letter shall be sent
6 by the Fort Wayne Police Department to the owner of
7 the real estate and a copy to the tenant/occupant
8 whose premise is the subject of the investigation,
9 by certified mail, return receipt requested,
10 informing said owner of the investigation revealed
11 said suspected illegal activity and the fact that
12 there is an on-going investigation. Said warning
13 letter shall inform the owner of his/her choice to
14 take action to abate such suspected illegal
15 activity and of the intent of the Fort Wayne Police
16 Department, if its on-going investigation indicates
17 such suspected illegal activity has not ceased, to
18 take further legal action.

19 (d) Once a search warrant has been obtained to
20 search the real estate premises for narcotics or
21 controlled substances, or for any other evidence
22 related to such suspected illegal activity, a
23 second letter which shall be sent to the owner of
24 the real estate, by certified mail, return receipt
25 requested, shall inform the owner that such
26 warrant was served, that the investigation at said
27 premises is continuing, and that legal proceedings
28 may be commenced pursuant to this Article. Such
29 letter shall inform said owner of his/her choice to
30 take some form of remedial action. A copy of said
31 letter shall be sent to the Chief of Police, the
32 City Attorney's Office and to the tenant/owner of
the premises for which a search warrant is
obtained.

#2 passed
occ spark

19 (e) Upon receipt of a copy of the second letter
20 issued under Section 18-57(d) of this Article, the
21 City Attorney's office may proceed under I.C. 34-1-
22 52-2(b) to abate or enjoin any suspected illegal
23 activity as defined herein constituting a nuisance
24 as defined in I.C. 34-1-52-1, and/or to advise the
25 Police Department of the City of Fort Wayne to
26 issue a notice pursuant to Section 18-54 and 18-55
27 of this Article. Prior to the issuance of this
28 notice to the owner, the tenant/occupant/visitor/guest or invitee shall be
29 arrested. Said notice shall advise that legal
30 proceedings may be instituted against the owner of
31 real estate pursuant to this Article and shall also
32 inform said owner of his/her choice to commence
eviction proceedings pursuant to Section 18-59 of
this Article.

#3 Dekare

28 **Sec. 18-58. CRITERIA FOR ESTABLISHING A VIOLATION.**
29 Conviction for a violation of this Article will be
30 determined by the appropriate judicial authority based
31 upon the totality of the circumstances present,
32 including, but not limited to that the owner has received
notices of suspected illegal activity pursuant to Secs.
18-54, 18-55 and 18-57 of this Article.

1 SECTION 2. Provision of legal counsel by the City of
2 Fort Wayne. In the event that any
tenant/occupant/visitor/guest or invitee ~~threatens or~~
3 initiates suit against the owner of real estate for the
owner's actions in compliance with this Article, the City of
Fort Wayne shall provide legal representation for said owner.
4

defended

5 SECTION 3. This Ordinance shall be in full force and
6 effect from and after its passage by the Common Council and
7 approval by the Mayor and proper legal publication.

8

9 COUNCILMEMBER

10 APPROVED AS TO FORM
11 AND LEGALITY.

12

13 Stanley A. Levine
14 Legal Advisor to
15 Fort Wayne Common Council
16
17 :
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32



THE CITY OF FORT WAYNE

CITY-COUNTY BUILDING • ROOM 122 • FORT WAYNE, INDIANA 46802 • 219-427-1208

SANDRA E KENNEDY CITY CLERK

November 24, 1992

Ms. Connie Lambert
Fort Wayne Newspapers, Inc.
600 West Main Street
Fort Wayne, IN 46802

Dear Ms. Lambert:

Please give the attached full coverage on the dates of November 27 and December 4, 1992, in both the News Sentinel and Journal Gazette.

RE: Legal Notice for Common Council
of Fort Wayne, IN

Bill No. G-92-08-41 (as amended) (as amended)
General Ordinance No. G-48-92
Real Estate which is Used for The
Illegal Use or Sale of Narcotics or
Controlled Substances, Gambling or
Prostitution

Please send us 4 copies of the Publisher's Affidavit from both newspapers.

Thank you.

Sincerely yours,

Sandra E. Kennedy

Sandra E. Kennedy
City Clerk

SEK/ne
ENCL: 1

LEGAL NOTICE

Notice is hereby given that on the 10th day of
November, 1992, the Common Council of the City
of Fort Wayne, Indiana, in a Regular Session did pass
the following Bill No. G-92-08-41 (as amended) (as amended) -- General
Ordinance No. G-48-92 to-wit:

3 **BILL NO. G-92-08-41 (AS AMENDED) (AS AMENDED)**

4 **GENERAL ORDINANCE NO. G-48-92**

5 AN ORDINANCE of the Common Council of the
6 City of Fort Wayne, Indiana amending
7 Chapter 18 of the Municipal Code of the
8 City of Fort Wayne by adding a new
9 Article III entitled "Real Estate which
is Used For The Illegal Use or Sale of
Narcotics or Controlled Substances,
Gambling or Prostitution."

10 WHEREAS, the Common Council of the City of Fort Wayne,
11 and the Mayor of the City of Fort Wayne have determined this
12 amendment to Chapter 18 of the Municipal Code of the City of
13 Fort Wayne, adding a new Article III "Real Estate which is
Used For The Illegal Sales of Narcotics or Controlled
Substances, Gambling or Prostitution" is necessary in order to
give the Police Department and other departments and agencies
of the City of Fort Wayne additional means to utilize in
building a stronger and safer city; and

15 WHEREAS, the addition of this Article III to Chapter 18
16 of the Municipal Code of the City of Fort Wayne promotes the
17 public safety and welfare of the citizens of the City of Fort
Wayne, and will be in the best interests of the City.

18 NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF
19 THE CITY OF FORT WAYNE, INDIANA AS FOLLOWS:

20 SECTION 1. Chapter 18 of the Municipal Code of the City
21 of Fort Wayne, Indiana is hereby amended by adding thereto a
22 new Article III "Real Estate Which Is Used For The Illegal Use
Or Sales Of Narcotics Or Controlled Dangerous Substances,
Gambling Or Prostitution," which shall read as follows:

23 Sec. 18-53. PURPOSE. The Common Council of the City of
Fort Wayne finds it to be in the best interests of the
residents of the City of Fort Wayne and the general
public to provide for the regulation of conduct it deems
to be offensive, to prevent vice, disorder and
immorality; and to promote public peace, health and
safety, and to this end, the Common Council enacts this
section.

28
29
30

1
2 **Sec. 18-54 PERMITTING THE USE OF REAL ESTATE FOR ILLICIT**
3 **DRUG ACTIVITY, GAMBLING OR PROSTITUTION.** No owner of

real estate located in the City of Fort Wayne shall knowingly allow that real estate to be used as a site for any use or sale of illicit narcotics or controlled dangerous substances, gambling or prostitution after having received written notice pursuant to I.C. 36-7-9-25, from the Police Department of the City of Fort Wayne, that a present occupant or tenant of that property has been using or selling illicit narcotics or controlled dangerous substances, or allowing the using or selling of illicit narcotics or controlled dangerous substances at that property, or has been engaging in or allowing gambling or prostitution, or has otherwise been engaging in or allowed activity constituting a nuisance pursuant to I.C. 34-1-52-1. A legal or equitable owner of such real estate is deemed to have knowledge of such activity upon receipt of notice set forth herein. For the purposes of this Article, an owner of real estate is defined as any person who, alone, or jointly or severally with others shall have legal or equitable title to any dwelling or dwelling unit.

13 Sec. 18-55. Notice is deemed to be given to the owner,
14 upon receipt of Notice as indicated above, by the owner
15 of record pursuant to the records and files of the Office
16 of the Allen County Assessor's Office.

17 **Sec. 18-56. DISCRIMINATION FORBIDDEN.** Nothing in this
18 section shall be construed to encourage or authorize the
19 discrimination by lessors against any person(s) based
20 upon race, creed, religion, sex, age, or national origin.
21 Rather, it is the intent of this article to hold persons
22 accountable for acquiescing in or participating in the
23 continued use of his/her property as the location of
24 illegal drug activity, after having received notice as
25 set forth in Section 18-55 above.

26 **Sec. 18-57. REPORTS, INVESTIGATIONS AND NOTICES BY THE**
27 **POLICE DEPARTMENT.**

28 (a) A complaint or report of suspected illegal
29 activities constituting the use or sale of
30 narcotics or controlled substances, or gambling,
31 prostitution, or conduct constituting a nuisance
32 pursuant to I.C. 34-1-52-1, by tenants, occupants
33 and/or their visitors, guests or invites as
34 observed by the lessor, third persons such as other
35 tenants of the property, or persons residing or
36 working in the vicinity of the property, or city
37 officials, and/or representatives of agencies
38 and/or departments of the City of Fort Wayne shall
39 be submitted to the office of Narcotics and Vice
40 Division of the Police Department of the City of
41 Fort Wayne and each such report or complaint shall
42 be individually logged in that office.

43 (b) Upon receipt of any report or complaint of
44 such suspected illegal activities on real estate
45 premises, a determination shall be made by the Fort
46 Wayne Police Department as to the need and nature
47 of any further investigation including, but not
48 limited to, the necessity for surveillance by the
49 Police Department of such real estate premises.

1
2 (c) Upon completion of investigation by the Fort
3 Wayne Police Department revealing that such
4 suspected illegal activity is taking place at a
5 particular premises, a warning letter shall be sent
6 by the Fort Wayne Police Department to the owner of
7 the real estate and a copy to the tenant/occupant
8 whose premise is the subject of the investigation,
9 by certified mail, return receipt requested,
10 informing the owner of the investigation revealed
11 the suspected illegal activity and the fact that
12 there is an on-going investigation. The warning
13 letter shall inform the owner of his/her choice to
14 take action to abate such suspected illegal
15 activity and of the intent of the Fort Wayne Police
16 Department, if its on-going investigation indicates
17 such suspected illegal activity has not ceased, to
18 take further legal action.

19 (d) Once a search warrant has been obtained to
20 search the real estate premises for narcotics or
21 controlled substances, or for any other evidence
22 related to such suspected illegal activity, a
23 second letter which shall be sent to the owner of
24 the real estate, by certified mail, return receipt
25 requested, shall inform the owner that such
26 warrant was served, that the investigation at the
27 premises is continuing, and that legal proceedings
28 may be commenced pursuant to this Article. Such
29 letter shall inform the owner of his/her choice to
30 take some form of remedial action. A copy of the
31 letter shall be sent to the Chief of Police, the
32 City Attorney's Office and to the tenant/occupant
33 of the premises for which a search warrant is
34 obtained.

35 (e) Upon receipt of a copy of the second letter
36 issued under Section 18-57(d) of this Article, the
37 City Attorney's office may proceed under I.C. 34-1-
38 52-2(b) to abate or enjoin any suspected illegal
39 activity as defined herein constituting a nuisance
40 as defined in I.C. 34-1-52-1, and/or to advise the
41 Police Department of the City of Fort Wayne to
42 issue a notice pursuant to Section 18-54 and 18-55
43 of this Article. The notice shall advise that
44 legal proceedings may be instituted against the
45 owner of real estate pursuant to this Article and
46 shall also inform the owner of his/her choice to
47 commence eviction proceedings pursuant to Section
48 18-59 of this Article.

49 **Sec. 18-58. CRITERIA FOR ESTABLISHING A VIOLATION.**
50 Conviction for a violation of this Article will be
51 determined by the appropriate judicial authority based
52 upon the totality of the circumstances present,
53 including, but not limited to that the owner has received
54 notices of suspected illegal activity pursuant to Secs.
55 18-54, 18-55 and 18-57 of this Article.

1
2 **Sec. 18-59. EVICTION PROCEEDINGS AS A DEFENSE.** No
3 person shall be charged with the violation of this
4 article if such person:

- 5 a) Has instituted eviction proceedings within
6 thirty (30) days of receipt of notice of
7 criminal activities in accordance with Section
8 18-54 above, against the tenant whose
9 suspected criminal activities would otherwise
10 give rise to potential liability under this
11 article; and,
- 12 b) Has completed the eviction proceedings within
13 thirty (30) days of commencement of the
14 proceedings.
- 15 c) If any eviction proceedings are not completed
16 within thirty (30) days by reason of court
17 ordered delays in such proceedings, the person
18 charged with a violation of this Article must,
19 nonetheless, move forward expeditiously with
20 any such eviction proceeding.

21 **Sec. 18-60. MULTIPLE UNIT DWELLINGS.** In the case of a
22 multiple unit dwelling, the only person(s) necessary to
23 name in an eviction proceeding is the tenant/occupant
24 occupying the actual unit involved with the suspected
25 illegal activity described herein.

26 **Sec. 18-61. FILING OF CRIMINAL CHARGES.** Charging an
27 owner of real estate with a violation of this Article
28 shall be an adjunct to, and not substitution for, any
29 criminal charges filed as a result of investigation by
30 the Police Department against occupants or tenants of
31 that owner's real estate premises for use or sale of
32 illicit drugs or controlled dangerous substances,
33 gambling, prostitution or conduct constituting a nuisance
34 pursuant to I.C. 34-1-52-1, or Section 18-35 of the
35 Municipal Code of the City of Fort Wayne.

36 **Sec. 18-62. ASSISTANCE BY CHIEF OF POLICE.** The Chief of
37 Police shall use reasonable efforts to train, educate and
38 assist owners of real estate in avoiding placing tenants
39 or occupants in their real estate who are known violators
40 of illegal activities enumerated herein.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32

Sec. 18-63: LIMITED INDEMNIFICATION OF OWNERS OF REAL ESTATE. The City of Fort Wayne shall provide a limited indemnification to an owner of real estate located in the City of Fort Wayne, subject to the following conditions:

1. That the owner of real estate shall have received the written notice required by Section 18-54 of this Article from the Police Department of the City of Fort Wayne advising that a present occupant or tenant of the property of that owner of real estate has been using or selling illicit narcotics or controlled dangerous substances or allowing the using or selling of illicit narcotics or controlled dangerous substances at that property, or who has been engaging in or allowing gambling or prostitution or as otherwise been engaging in or allowing activity constituting a nuisance pursuant to I.C. 34-1-52-1.
2. That the owner of real estate has instituted eviction proceedings with thirty (30) days of receipt of notice of suspected illegal activities in accordance with Section 18-54 of this article against a tenant whose suspected criminal activities would otherwise give rise to potential liability under this article.
3. That the owner of real estate shall give no less than thirty (30) days notice to the City Attorney, by certified mail, return-receipt requested, of the trial date for any eviction proceedings and a list containing the names and addresses of all witnesses the owner of real estate intends to call at the hearing.
4. That the City Attorney, upon receipt of the notice and list of witnesses shall have the right to provide the owner of real estate with the names and addresses of additional other witnesses including but not limited to witnesses from the Fort Wayne Police Department whose presence shall be required at the hearing on the eviction proceedings.
5. All witnesses listed by either the owner of real estate and/or the City Attorney's office shall be subpoenaed by the owner of real estate in proper and legal fashion, and be allowed to testify.
6. The tenant involved as a defendant in the eviction proceedings shall prevail on the merits, not by reason of procedural irregularities but by sole reason that a court finds after trial that the illegal activity alleged in the notice the owner of real estate had received pursuant to Section 18-54 of this article, did not, in fact, take place.
7. The tenant institutes legal proceedings against the owner of real estate in the form of a counter claim or separate action and obtains a judgment for damages against the owner of real estate by reason of the tenant having prevailed on the merits in accordance with paragraph 6 above.
8. The owner of real estate completes whatever steps he/she chooses to undertake to seek review of the judgment by Motion to Correct Errors and/or appeal.

1 .9. The limited indemnification by the City of Fort
2 Wayne shall be restricted solely to those damages
3 assessed by judgment against the owner of real
4 estate as set out aforesaid but shall not, in any
5 event, include any attorney's fees incurred by the
6 owner of real estate in connection with the
enforcement of any of the terms of this article;
but will include either the reasonable attorney's
fees incurred in the defense of legal proceedings
brought by a tenant pursuant to paragraph 7 above
regardless of the outcome of the proceedings, or
the provision of the legal services by the City of
Fort Wayne, at the City's option.

7 Sec. 18-64. LIST TO BE KEPT BY POLICE DEPARTMENT. The
8 Police Department shall keep a list of the names and
9 addresses of all tenants/occupants to whom copies of
letters sent pursuant to Sec. 18-57 (d) of this
article, and shall make the names available to members of
the public requesting same in reference to potential
renters of real estate in the City.

10 Sec. 18-65. PENALTY. Whoever violates any provision of
11 this section shall, upon conviction thereof, in a sum up
12 to Two Thousand Five Hundred Dollars (\$2,500.00) and
13 costs of prosecution. Each day a violation of this
article continues constitutes a separate offense.

14 Sec. 2 This Ordinance shall be in full force and effect
15 60 days after its passage by the Common Council and approved
by the Mayor of the City of Fort Wayne and proper legal
16 publication, during which period owners of real estate in the
City of Fort Wayne, Indiana shall have the opportunity to
17 prepare lease documents for execution by their tenants, which
lease documents take into consideration the existence of this
ordinance.

20 Donald J. Schmidt
COUNCILMEMBER

21 Read the third time in full and on motion by Schmidt, and
duly adopted, placed on its passage. PASSED by the following vote:

AYES: Nine
Bradbury, Edmonds, GiaQuinta, Henry, Long,
Lunsey, Ravine, Schmidt, Talarico
NAYS: None
ABSENT: None
ABSTAINED: None

DATED: 11-10-92 Sandra E. Kennedy
City Clerk

Passed and adopted by the Common Council of the City of
Fort Wayne, Indiana, as General Ordinance No. G-48-92 on the 10th
day of November, 1992

ATTEST: SEAL

Sandra E. Kennedy Thomas C. Henry
City Clerk Presiding Officer

Presented by me to the Mayor of the City of Fort Wayne,
Indiana, on the 12th day of November, 1992, at the hour of 1:00
P.M., E.S.T.

Sandra E. Kennedy
City Clerk

Approved and signed by me this 20th day of November,
1992, at the hour of 11:00 o'clock A.M., E.S.T.

Paul Helmke
Mayor

I, The Clerk of the City of Fort Wayne, Indiana do hereby certify
that the above and foregoing is a full, true and complete copy of

Read the first time in full and on motion by Jelmedt,
and duly adopted, read the second time by title and referred to the
Committee on The Committee of the Whole (and the City Plan Commission
for recommendation) and Public Hearing to be held after due legal notice, at
the Common Council Council Conference Room 128, City-County Building, Fort
Wayne, Indiana, on _____, the _____ day of _____
M., E.S.T.

DATED: 8-25-92

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Read the third time in full and on motion by Jelmedt,
and duly adopted, placed on its passage. PASSED LOST
by the following vote:

	AYES	NAYS	ABSTAINED	ABSENT
TOTAL VOTES	<u>9</u>	<u>0</u>		
BRADBURY	<u>✓</u>			
EDMONDS	<u>✓</u>			
GiaQUINTA	<u>✓</u>			
HENRY	<u>✓</u>			
LONG	<u>✓</u>			
LUNSEY	<u>✓</u>			
RAVINE	<u>✓</u>			
SCHMIDT	<u>✓</u>			
TALARICO	<u>✓</u>			

DATED: 11-10-92

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne,
Indiana, as (ANNEXATION) (APPROPRIATION) (GENERAL)
(SPECIAL) (ZONING) ORDINANCE RESOLUTION NO. 1548 - 92
on the 10th day of November, 1992

ATTEST:

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

(SEAL)

PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on
the 12th day of November, 1992,
at the hour of 1:00 o'clock M., E.S.T.

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Approved and signed by me this 20th day of November,
1992, at the hour of 11:00 o'clock A.M., E.S.T.

PAUL HELMKE, MAYOR

FW Common Council

(Governmental Unit)

ALLEN

County, Indiana

To: _____ Dr.

The Journal-Gazette

P.O. Box 100

Fort Wayne, IN

PUBLISHER'S CLAIM**LINE COUNT**

Display Matter (Must not exceed two actual lines, neither of which shall total more than four solid lines of type in which the body of the advertisement is set)
 -- number of equivalent lines _____

Head -- number of lines _____

Body -- number of lines _____

Tail -- number of lines _____

Total number of lines in notice _____

COMPUTATION OF CHARGES

332 lines, 1 columns wide equals 332 equivalent lines
 at .495 cents per line \$ 164.34

Additional charge for notices containing rule or tabular work
 (50 percent of above amount) _____

Charge for extra proofs of publication (\$1.00 for each proof in excess of two) 2.00

TOTAL AMOUNT OF CLAIM \$ 166.34

DATA FOR COMPUTING COSTWidth of single column 12.5 emsNumber of insertions 2Size of type 6 point

Pursuant to the provisions and penalties of Chapter 155, Acts 1953,

I hereby certify that the foregoing account is just and correct, that the amount claimed is legally due, after allowing all just credits, and that no part of the same has been paid.

Date: Dec 4, 1992

Title: _____

Clerk

PUBLISHER'S AFFIDAVIT

State of Indiana)

) ss:

Allen County)

Personally appeared before me, a notary public in and for said county and state, the undersigned Cindy Gillenwater who, being duly sworn, says that he/she is Clerk of the The Journal-Gazette newspaper of general circulation printed and published in the English language in the (city) (town) of Fort Wayne, IN in state and county aforesaid, and that the printed matter attached hereto is a true copy, which was duly published in said paper for 2 time _____, the dates of publication being as follows:

11/27/92 12/4/92

Subscribed and sworn to before me this 4th day of Dec, 1992

Notary Public Whitley County, IN
SHELLEY R. LARUE

My commission expires: March 3, 1994

FW Common Council
(Governmental Unit)To: The News-Sentinel
P.O. Box 100
Fort Wayne, IN

ALLEN County, Indiana

PUBLISHER'S CLAIM**LINE COUNT**

Display Matter (Must not exceed two actual lines, neither of which shall total more than four solid lines of type in which the body of the advertisement is set)
-- number of equivalent lines _____

Head -- number of lines _____

Body -- number of lines _____

Tail -- number of lines _____

Total number of lines in notice _____

COMPUTATION OF CHARGES

332 lines, 1 columns wide equals 332 equivalent lines
at .495 cents per line \$ 164.34

Additional charge for notices containing rule or tabular work
(50 percent of above amount) _____

Charge for extra proofs of publication (\$1.00 for each proof in excess of two) 2.00

TOTAL AMOUNT OF CLAIM \$ 166.34

DATA FOR COMPUTING COST

Width of single column 12.5 ems
Number of insertions 2
Size of type 6 point

Pursuant to the provisions and penalties of Chapter 155, Acts 1953,

I hereby certify that the foregoing account is just and correct, that the amount claimed is legally due, after allowing all just credits, and that no part of the same has been paid.

Date: Dec 4, 1992

Title:

Clerk

PUBLISHER'S AFFIDAVIT

State of Indiana)
) ss:
Allen County)

Personally appeared before me, a notary public in and for said county and state, the undersigned Cindy Gillenwater who, being duly sworn, says that he/she is Clerk of the The News-Sentinel newspaper of general circulation printed and published in the English language in the (city) (town) of Fort Wayne, IN in state and county aforesaid, and that the printed matter attached hereto is a true copy, which was duly published in said paper for 2 time , the dates of publication being as follows:

11/27/92 12/4/92

Subscribed and sworn to before me this 4th day of Dec 92

My commission expires: March 3, 1994

Notary Public Whitley County, IN
SHELLEY R. LARUE

ATTACH COPY
OF ADVERTISEMENT
HERE

ce is hereby given that on the 10th day of November, 1992, the Common Council of The City of Fort Wayne, Indiana, in a Regular Session did pass following Bill No. G-92-08-41 (as amended) (as ended) — General Ordinance No. G-48-92 to-wit: NO. NO. G-92-08-41 (AS AMENDED) (AS AMENDED)

GENERAL ORDINANCE NO. G-48-92

ORDINANCE of the Common Council of the City of Fort Wayne, Indiana amending Chapter 18 of the Municipal Code of the City of Fort Wayne by adding new Article III entitled Real Estate which is Used for the Illegal Use or Sale of Narcotics or Controlled Substances, Gambling or Prostitution.

WHEREAS, the Common Council of the City of Fort Wayne, and the Mayor of the City of Fort Wayne determined this amendment to Chapter 18 of Municipal Code of the City of Fort Wayne, adds a new Article III Real Estate which is Used for the Illegal Use or Sale of Narcotics or Controlled Substances, Gambling or Prostitution is necessary in order to give the Police Department and other departments and agencies of the City of Fort Wayne additional means to utilize in building a stronger and safer city; and

WHEREAS, the addition of this Article III to Chapter of the Municipal Code of the City of Fort Wayne promotes the public safety and welfare of the citizens of the City of Fort Wayne, and will be in the interest of the City.

WE THEREFORE BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA AS FOLLOWS:

SECTION 1. Chapter 18 of the Municipal Code of the City of Fort Wayne, Indiana is hereby amended by adding thereto a new Article III "Real Estate which is Used for the Illegal Use or Sales Of Narcotics Or Controlled Dangerous Substances, Gambling Or Prostitution," which shall read as follows:

18-53. PURPOSE: The Common Council of the City of Fort Wayne finds it to be in the best interests of the residents of the City of Fort Wayne and the general public to provide for the regulation of certain items to be offensive, to prevent vice, disorder and immorality; and to promote public peace, health and safety; and to this end, the Common Council enacts this section.

18-54' PERMITTING THE USE OF REAL ESTATE FOR ILLICIT DRUG ACTIVITY, GAMBLING PROSTITUTION: No owner of real estate located in the City of Fort Wayne shall knowingly allow that estate to be used as a site for any use or sale of narcotics or controlled dangerous substances, gambling or prostitution after having received written notice pursuant to I.C. 36-7-9-25, from the Police Department of the City of Fort Wayne, that a present occupant or tenant of that property has been using selling illicit narcotics or controlled dangerous substances; or allowing the using or selling of illicit narcotics or controlled dangerous substances at that property, or has been engaging in or allowing gambling or prostitution; or has otherwise been engaging in or allowing activity constituting a nuisance pursuant to I.C. 34-1-52-1. A legal or equitable owner of real estate is deemed to have knowledge of such activity upon receipt of notice set forth herein. The purposes of this Article, an owner of real estate is defined as any person who, alone, or jointly or equally with others, shall have legal or equitable title to his dwelling or dwelling unit.

18-55' NOTICE IS DEEMED TO BE GIVEN TO THE OWNER UPON RECEIPT OF NOTICE AS INDICATED ABOVE, BY OWNER OF RECORD PURSUANT TO THE RECORDS AND FILES OF THE OFFICE OF THE ALLEN COUNTY ASSESSOR'S OFFICE.

18-56. DISCRIMINATION FORBIDDEN: Nothing in this section shall be construed to encourage or tolerate the discrimination by lessors against any person(s) based upon race, creed, religion, sex, or national origin. Rather, it is the intent of this article to hold persons accountable for acquiescing or participating in the continued use of his/her property as the location of illegal drug activity, after receiving notice as set forth in Section 18-55 above.

18-57. REPORTS, INVESTIGATIONS AND NOTES BY THE POLICE DEPARTMENT.

A complaint or report of suspected illegal activities constituting the use or sale of narcotics or controlled substances, or gambling, prostitution, or con-

tractors, guests or invitees as observed by the lessor, third persons such as other tenants of the property, or persons residing or working in the vicinity of the property, or city officials, and/or representatives of agencies and/or departments of the City of Fort Wayne shall be submitted to the office of Narcotics and Vice Division of the Police Department of the City of Fort Wayne and each such report or complaint shall be individually logged in that office.

(b) Upon receipt of any report or complaint of such suspected illegal activities on real estate premises, a determination shall be made by the Fort Wayne Police Department as to the need and nature of any further investigation including, but not limited to, the necessity for surveillance by the Police Department of such real estate premises.

(c) Upon completion of investigation by the Fort Wayne Police Department revealing that such suspected illegal activity is taking place at a particular premises, a warning letter shall be sent by the Fort Wayne Police Department to the owner of the real estate and a copy to the tenant/occupant whose premise is the subject of the investigation, by certified mail, return receipt requested, informing the owner of the investigation revealed the suspected illegal activity and the fact that there is an on-going investigation. The warning letter shall inform the owner of his/her choice to take action to abate such suspected illegal activity and of the intent of the Fort Wayne Police Department, if its on-going investigation indicates such suspected illegal activity has not ceased, to take further legal action.

(d) Once a search warrant has been obtained to search the real estate premises for narcotics or controlled substances, or for any other evidence related to such suspected illegal activity, a second letter which shall be sent to the owner of the real estate, by certified mail, return receipt requested, shall inform the owner that such warrant was served, that the investigation at the premises is continuing, and that legal proceedings may be commenced pursuant to this Article. Such letter shall inform the owner of his/her choice to take some form of remedial action. A copy of the letter shall be sent to the Chief of Police, the City Attorney's Office and to the tenant/occupant of the premises for which a search warrant is obtained.

(e) Upon receipt of a copy of the second letter issued under Section 18-57 (d) of this Article, the City Attorney's office may proceed under I.C. 34-1-52-2 (b) to abate or enjoin any suspected illegal activity as defined herein constituting a nuisance as defined in I.C. 34-1-52-1, and/or to advise the Police Department of the City of Fort Wayne to issue a notice pursuant to Section 18-54 and 18-55 of this Article. The notice shall advise that legal proceedings may be instituted against the owner of real estate pursuant to this Article and shall also inform the owner of his/her choice to commence eviction proceedings pursuant to Section 18-59 of this Article.

Sec. 18-58. CRITERIA FOR ESTABLISHING A VIOLATION: Conviction for a violation of this Article will be determined by the appropriate judicial authority based upon the totality of the circumstances present, including, but not limited to that the owner has received notices of suspected illegal activity pursuant to Secs. 18-54, 18-55 and 18-57 of this Article.

Sec. 18-59. EVICTION PROCEEDINGS AS A DEFENSE: No person shall be charged with the violation of this article if such person:

a) Has instituted eviction proceedings within thirty (30) days of receipt of notice of criminal activities in accordance with Section 18-54 above, against the tenant whose suspected criminal activities would otherwise give rise to potential liability under this article; and,

b) Has completed the eviction proceedings within thirty (30) days of commencement of the proceeding.

c) If any eviction proceedings are not completed within thirty (30) days by reason of court ordered delays in such proceedings, the person charged with a violation of this Article must, nonetheless, move forward expeditiously with any such eviction proceeding.

Sec. 18-60. MULTIPLE UNIT DWELLINGS: In the case of a multiple unit dwelling, the only person(s) necessary to name in an eviction proceeding is the tenant/occupant occupying the actual unit involved with the suspected illegal activity described herein.

Sec. 18-61. FILING OF CRIMINAL CHARGES.

This Article shall be an adjunct to, and not substitution for, any criminal charges filed as a result of investigation by the Police Department against occupants or tenants of that owner's real estate premises for use or sale of illicit drugs or controlled dangerous substances, gambling, prostitution or conduct constituting a nuisance pursuant to I.C. 34-1-52-1, or Section 18-35 of the Municipal Code of the City of Fort Wayne.

Sec. 18-62. ASSISTANCE BY CHIEF OF POLICE: The Chief of Police shall use reasonable efforts to train, educate and assist owners of real estate in avoiding placing tenants or occupants in their real estate who are known violators of illegal activities enumerated herein.

Sec. 18-63. LIMITED INDEMNIFICATION OF OWNERS OF REAL ESTATE: The City of Fort Wayne shall provide a limited indemnification to an owner of real estate located in the City of Fort Wayne, subject to the following conditions:

i. That the owner of real estate shall have received the written notice required by Section 18-54 of this Article from the Police Department of the City of Fort Wayne advising that a present occupant or tenant of the property of that owner of real estate has been using or selling illicit narcotics or controlled dangerous substances or allowing the using or selling of illicit narcotics or controlled dangerous substances at that property, or who has been engaging in or allowing gambling or prostitution or as otherwise been engaging in or allowing activity constituting a nuisance pursuant to I.C. 34-1-52-1.

2. That the owner of real estate has instituted eviction proceedings with thirty (30) days of receipt of notice of suspected illegal activities in accordance with Section 18-54 of this article against a tenant whose suspected criminal activities would otherwise give rise to potential liability under this article.

3. That the owner of real estate shall give no less than thirty (30) days notice to the City Attorney, by certified mail, return-receipt requested, of the trial date for any eviction proceedings and a list containing the names and addresses of all witnesses the owner of real estate intends to call at the hearing.

4. That the City Attorney, upon receipt of the notice and list of witnesses shall have the right to provide the owner of real estate with the names and addresses of additional other witnesses including but not limited to witnesses from the Fort Wayne Police Department whose presence shall be required at the hearing on the eviction proceedings.

5. All witnesses listed by either the owner of real estate and/or the City Attorney's office shall be subpoenaed by the owner of real estate in proper and legal fashion, and be allowed to testify.

6. The tenant involved as a defendant in the eviction proceedings shall prevail on the merits, not by reason of procedural irregularities but by sole reason that a court finds after trial that the illegal activity alleged in the notice the owner of real estate had received pursuant to Section 18-54 of this article, did not, in fact, take place.

7. The tenant institutes legal proceedings against the owner of real estate in the form of a counter claim or separate action and obtains a judgment for damages against the owner of real estate by reason of the tenant having prevailed on the merits in accordance with paragraph 6 above.

8. The owner of real estate completes whatever steps he/she chooses to undertake to seek review of the judgment by Motion to Correct Errors and/or appeal.

9. The limited indemnification by the City of Fort Wayne shall be restricted solely to those damages assessed by judgment against the owner of real estate as set out aforesaid but shall not, in any event, include any attorney's fees incurred by the owner of real estate in connection with the enforcement of any of the terms of this article, but will include either the reasonable attorney's fees incurred in the defense of legal proceedings brought by a tenant pursuant to paragraph 7 above regardless of the outcome of the proceedings, or the provision of the legal services by the City of Fort Wayne, at the City's option.

Sec. 18-64. LIST TO BE KEPT BY POLICE DEPARTMENT: The Police Department shall keep a list of the names and addresses of all tenants/occupants to whom copies of letters sent pursuant to Sec. 18-57 (d) of this article, and shall make the names available to members of the public requesting same in reference to potential renters of real estate in the

Sec. 18-65. PENALTY: Violation of any provision of this section shall, upon conviction thereof, a sum up to Two Thousand Five Hundred Dollars (\$2,500.00) and costs of prosecution. Each day of violation of this article continues constitutes a separate offense.

Sec. 2 This Ordinance shall be in full force and effect 60 days after its passage by the Common Council and approved by the Mayor of the City of Fort Wayne and proper legal publication, during which period owners of real estate in the City of Fort Wayne, Indiana shall have the opportunity to file lease documents for execution by their tenants which lease documents take into consideration the existence of this ordinance.

Donald J. Sch
COUNCILMEMBER

Read the third time in full and on motion by Sch and duly adopted, placed on its passage. PASSED by the following vote:

AYES: Nine
Bradbury, Edmonds, GiaQuinta, Henry, L
Lunsey, Ravine, Schmidt, Talarico

NAYS: None
ABSENT: None
ABSTAINED: None

DATED 11-10-92 Sandra E. Kennedy
City Clerk

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as General Ordinance No. G-48-92 on the 10th day of November, 1992.

ATTEST:
Sandra E. Kennedy Thomas C. H
City Clerk Presiding Officer

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 12th day of November 1992, at the hour of 1:00 P.M., E.S.T.

Sandra E. Kennedy
City Clerk

Approved and signed by me this 20th day of November 1992, at the hour of 11:00 o'clock A.M.E.S.T.

Paul H.

I, The Clerk of the City of Fort Wayne, Indiana hereby certify that the above and foregoing is true and complete copy of General Ordinance G-48-92, passed by the Common Council on the 10th day of November, 1992, and that said Ordinance was duly signed and approved by the Mayor on the 12th day of November, 1992, and now remains file and on record in my office.

WITNESS my hand, and the official seal of the City of Fort Wayne, Indiana, this 20th day of November 1992.

SANDRA E. KENNEDY, CITY CLERK

11-27-12-4

Notice is hereby given that on the 10th day of November, 1992, the Common Council of The City of Fort Wayne, Indiana, in a Regular Session did pass the following Bill No. G-92-08-41 (as amended) (as amended) — General Ordinance No. G-48-92-to-wt: LL NO. G-92-08-41 (AS AMENDED) (AS AMENDED).

GENERAL ORDINANCE NO. G-48-92

ORDINANCE of the Common Council of the City of Fort Wayne, Indiana amending Chapter 18 of the Municipal Code of the City of Fort Wayne by adding a new Article III entitled Real Estate which is Used for The Illegal Use or Sale of Narcotics or Controlled Substances, Gambling or Prostitution.

HEREAS, the Common Council of the City of Fort Wayne, and the Mayor of the City of Fort Wayne have determined this amendment to Chapter 18 of the Municipal Code of the City of Fort Wayne, adding a new Article III "Real Estate which is Used for The Illegal Use or Sales Of Narcotics or Controlled Substances, Gambling or Prostitution is necessary in order to give the Police Department and other departments and agencies of the City of Fort Wayne additional means to utilize in building a stronger and safer city; and

HEREAS, the addition of this Article III to Chapter 18 of the Municipal Code of the City of Fort Wayne promotes the public safety and welfare of the citizens of the City of Fort Wayne, and will be in the best interests of the City.

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA AS FOLLOWS:

SECTION 1. Chapter 18 of the Municipal Code of the City of Fort Wayne, Indiana is hereby amended by adding thereto a new Article III "Real Estate which is Used for The Illegal Use or Sales Of Narcotics or Controlled Substances, Gambling or Prostitution, which shall read as follows:

c. 18-53. PURPOSE. The Common Council of the City of Fort Wayne finds it to be in the best interests of the residents of the City of Fort Wayne and the general public to provide for the regulation of conduct it deems to be offensive, to prevent vice, disorder and immorality, and to promote public peace, health and safety, and to this end, the Common Council enacts this section.

c. 18-54. PERMITTING THE USE OF REAL ESTATE FOR ILLICIT DRUG ACTIVITY, GAMBLING & PROSTITUTION. No owner of real estate located in the City of Fort Wayne shall knowingly allow that real estate to be used as a site for any use or sale of illicit narcotics or controlled dangerous substances, gambling or prostitution after having received written notice pursuant to I.C. 36-7-9-25, from the Police Department of the City of Fort Wayne, that a present occupant or tenant of that property has been using selling illicit narcotics or controlled dangerous substances, or allowing the using or selling of illicit narcotics or controlled dangerous substances at that property, or has been engaging in or allowing gambling or prostitution, or has otherwise been engaging in or allowed activity constituting a nuisance pursuant to I.C. 34-1-52-1. A legal or equitable owner of real estate is deemed to have knowledge of such activity upon receipt of notice set forth herein. The purposes of this Article, an owner of real estate is defined as any person who, alone, or jointly or severally with others shall have legal or equitable title to any dwelling or dwelling unit.

c. 18-55. Notice is deemed to be given to the owner, upon receipt of notice as indicated above, by owner of record pursuant to the records and files of the Office of the Allen County Assessor's Office.

c. 18-56. DISCRIMINATION FORBIDDEN. Nothing in this section shall be construed to encourage or authorize the discrimination by lessors against any person(s) based upon race, creed, religion, sex, or national origin. Rather, it is the intent of this article to hold persons accountable for acquiescing or participating in the continued use of his/her property as the location of illegal drug activity, after having received notice as set forth in Section 18-55 above.

c. 18-57. REPORTS, INVESTIGATIONS AND NOTICES BY THE POLICE DEPARTMENT.

A complaint or report of suspected illegal activities constituting the use or sale of narcotics or controlled substances, or gambling, prostitution, or con-

ditions 34-1-52-1, by tenants, occupants and/or their visitors, guests or invitees as observed by the lessor, third persons such as other tenants of the property, or persons residing or working in the vicinity of the property, or city officials, and/or representatives of agencies and/or departments of the City of Fort Wayne shall be submitted to the office of Narcotics and Vice Division of the Police Department of the City of Fort Wayne and each such report or complaint shall be individually logged in that office.

(b) Upon receipt of any report or complaint of such suspected illegal activities on real estate premises, a determination shall be made by the Fort Wayne Police Department as to the need and nature of any further investigation including, but not limited to, the necessity for surveillance by the Police Department of such real estate premises.

(c) Upon completion of investigation by the Fort Wayne Police Department revealing that such suspected illegal activity is taking place at a particular premises, a warning letter shall be sent by the Fort Wayne Police Department to the owner of the real estate and a copy to the tenant/occupant whose premise is the subject of the investigation, by certified mail, return receipt requested, informing the owner of the investigation revealed the suspected illegal activity and the fact that there is an on-going investigation. The warning letter shall inform the owner of his/her choice to take action to abate such suspected illegal activity and of the intent of the Fort Wayne Police Department, if its on-going investigation indicates such suspected illegal activity has not ceased, to take further legal action.

(d) Once a search warrant has been obtained to search the real estate premises for narcotics or controlled substances, or for any other evidence related to such suspected illegal activity, a second letter which shall be sent to the owner of the real estate, by certified mail, return receipt requested, shall inform the owner that such warrant was served, that the investigation at the premises is continuing, and that legal proceedings may be commenced pursuant to this Article. Such letter shall inform the owner of his/her choice to take some form of remedial action. A copy of the letter shall be sent to the Chief of Police, the City Attorney's Office and to the tenant/occupant of the premises for which a search warrant is obtained.

(e) Upon receipt of a copy of the second letter issued under Section 18-57 (d) of this Article, the City Attorney's office may proceed under I.C. 34-1-52-2 (b), to abate or enjoin any suspected illegal activity as defined herein constituting a nuisance as defined in I.C. 34-1-52-1, and/or to advise the Police Department of the City of Fort Wayne to issue a notice pursuant to Section 18-54 and 18-55 of this Article.

Sec. 18-58. CRITERIA FOR ESTABLISHING A VIOLATION. Conviction for a violation of this Article will be determined by the appropriate judicial authority based upon the totality of the circumstances present, including, but not limited to that the owner has received notices of suspected illegal activity pursuant to Secs. 18-54, 18-55 and 18-57 of this Article.

Sec. 18-59. EVICTION PROCEEDINGS AS A DEFENSE. No person shall be charged with the violation of this article if such person:

a) Has initiated eviction proceedings within thirty (30) days of receipt of notice of criminal activities in accordance with Section 18-54 above, against the tenant whose suspected criminal activities would otherwise give rise to potential liability under this article; and,

b) Has completed the eviction proceedings within thirty (30) days of commencement of the proceedings.

c) If any eviction proceedings are not completed within thirty (30) days by reason of court ordered delays in such proceedings, the person charged with a violation of this Article must, nonetheless, move forward expeditiously with any such eviction proceeding.

Sec. 18-60. MULTIPLE UNIT DWELLINGS. In the case of a multiple unit dwelling, the only person(s) necessary to name in an eviction proceeding is the tenant/occupant occupying the actual unit involved with the suspected illegal activity described herein.

Sec. 18-61. FILING OF CRIMINAL CHARGES.

This Article shall be an adjunct to, and not substitution for, any criminal charges filed as a result of investigation by the Police Department against occupants or tenants of that owner's real estate premises for use or sale of illicit drugs or controlled dangerous substances, gambling, prostitution or conduct constituting a nuisance pursuant to I.C. 34-1-52-1, or Section 18-35 of the Municipal Code of the City of Fort Wayne.

Sec. 18-62. ASSISTANCE BY CHIEF OF POLICE. The Chief of Police shall use reasonable efforts to train, educate and assist owners of real estate in avoiding placing tenants or occupants in their real estate who are known violators of illegal activities enumerated herein.

Sec. 18-63. LIMITED INDEMNIFICATION OF OWNERS OF REAL ESTATE. The City of Fort Wayne shall provide a limited indemnification to an owner of real estate located in the City of Fort Wayne, subject to the following conditions:

I. That the owner of real estate shall have received the written notice required by Section 18-54 of this Article from the Police Department of the City of Fort Wayne advising that a present occupant or tenant of the property of that owner of real estate has been using or selling illicit narcotics or controlled dangerous substances or allowing the using or selling of illicit narcotics or controlled dangerous substances at that property, or who has been engaging in or allowing gambling or prostitution or as otherwise been engaging in or allowing activity constituting a nuisance pursuant to I.C. 34-1-52-1.

2. That the owner of real estate has instituted eviction proceedings with thirty (30) days of receipt of notice of suspected illegal activities in accordance with Section 18-54 of this article against a tenant whose suspected criminal activities would otherwise give rise to potential liability under this article.

3. That the owner of real estate shall give no less than thirty (30) days notice to the City Attorney, by certified mail, return-receipt requested, of the trial date for any eviction proceedings and a list containing the names and addresses of all witnesses the owner of real estate intends to call at the hearing.

4. That the City Attorney, upon receipt of the notice and list of witnesses shall have the right to provide the owner of real estate with the names and addresses of additional other witnesses including but not limited to witnesses from the Fort Wayne Police Department whose presence shall be required at the hearing on the eviction proceedings.

5. All witnesses listed by either the owner of real estate and/or the City Attorney's office shall be subpoenaed by the owner of real estate in proper and legal fashion, and be allowed to testify.

6. The tenant involved as a defendant in the eviction proceedings shall prevail on the merits, not by reason of procedural irregularities but by sole reason that a court finds after trial that the illegal activity alleged in the notice the owner of real estate had received pursuant to Section 18-54 of this article, did not, in fact, take place.

7. The tenant institutes legal proceedings against the owner of real estate in the form of a counter claim or separate action and obtains a judgment for damages against the owner of real estate by reason of the tenant having prevailed on the merits in accordance with paragraph 6 above.

8. The owner of real estate completes whatever steps he/she chooses to undertake to seek review of the judgment by Motion to Correct Errors and/or appeal.

9. The limited indemnification by the City of Fort Wayne shall be restricted solely to those damages assessed by judgment against the owner of real estate as set out aforesaid but shall not, in any event, include any attorney's fees incurred by the owner of real estate in connection with the enforcement of any of the terms of this article; but will include either the reasonable attorney's fees incurred in the defense of legal proceedings brought by a tenant pursuant to paragraph 7 above regardless of the outcome of the proceedings, or the provision of the legal services by the City of Fort Wayne at the City's option.

Sec. 18-64. LIST TO BE KEPT BY POLICE DEPARTMENT. The Police Department shall keep a list of the names and addresses of all tenants/occupants to whom copies of letters sent pursuant to Sec. 18-57 (d) of this article, and shall make the names available to members of the public requesting same in reference to potential renters of real estate in the

Sec. 18-65. PENALTY. Whoever violates any provision of this section shall, upon conviction thereof, be fined up to Two Thousand Five Hundred Dollars (\$2,500.00) and costs of prosecution. Each violation of this article continues constitutes a separate offense.

Sec. 2 This Ordinance shall be in full force and 60 days after its passage by the Common Council and approved by the Mayor of the City of Fort Wayne and proper legal publication, during period owners of real estate in the City of Fort Wayne, Indiana shall have the opportunity to prepare lease documents for execution by their lessees which lease documents take into consideration existence of this ordinance.

Donald J. Sc
COUNCILME

Read the third time in full and on motion by Sc and duly adopted, placed on its passage, PA by the following vote:

AYES: Nine

Bradbury, Edmonds, GiaQuinta, Henry, Lunsey, Ravine, Schmidt, Talarico

NAYS: None

ABSENT: None

ABSTAINED: None

DATED 11-10-92

Sandra E. Ke

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as General Ordinance No. G-48-92 on the 10th day of November, 1992.

ATTEST:

Thomas C. Kennedy

City Clerk

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 12th day of November, 1992, at the hour of 1:00 P.M., E.S.T.

Sandra E. Ke

Approved and signed by me this 20th day of November, 1992, at the hour of 11:00 o'clock A.M., E.S.T.

Paul H.

I, The Clerk of the City of Fort Wayne, Indiana hereby certify that the above and foregoing is true and complete copy of General Ordinance G-48-92, passed by the Common Council on the 10th day of November, 1992, and that said Ordinance was duly signed and approved by the Mayor on the 20th day of November, 1992, and now remains file and on record in my office.

WITNESS my hand, and the official seal of the City of Fort Wayne, Indiana, this 20th day of November, 1992.

SANDRA E. KENNEDY, CITY CLERK

11-27/12-4